



Environmental Quality Commission
Lindell Ormsbee, Chair, *Lexington*
Gordon Garner, Vice-Chair, *Prospect*
Karen Deaton, *Summerset*
Andrew Ernest, *Bowling Green*
Rebecca Farris, *Lexington*
Eugene Zick, *Russellville*
Laura Knoth, *Grand Rivers*

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ENVIRONMENTAL QUALITY COMMISSION

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12 June 2006

LaJuana S. Wilcher, Secretary
Environmental and Public Protection Cabinet
Capital Plaza Tower
Frankfort, KY 40601

Secretary Wilcher:

The issue of mountaintop removal mining has been reviewed by the Environmental Quality Commission (EQC). To date EQC has hosted the meetings listed below, soliciting the concerns and positions of this contentious issue from the public, the mining industry and state regulatory agencies.

- 28 September 2005 in Frankfort (14 speakers)
- 29 September 2005 in Prestonsburg (80 private citizens and 15 state/regulatory personnel)
- 5 December 2005 EQC Annual Meeting in Frankfort
- 13 February 2006 EQC Legislative Review Meeting in Frankfort

Pursuant to these meetings, EQC developed the attached resolution to:

- formally address public concern regarding mountaintop removal mining;
- encourage increased public awareness on the mining and regulatory process;
- support increased accountability on the part of mining operators to avoid, protect and replace environmental resources potentially impacted by mining activities and
- support the enforcement and monitoring efforts of state regulatory agencies involved with the mining permit review process.

This resolution is submitted for your review and consideration. Thank you for your attention to this matter. Please contact the EQC with questions/comments.

Sincerely,

Lindell Ormsbee

Lindell Ormsbee, Chair, Environmental Quality Commission

Cc: Susan Bush, DNR
Lloyd Cress, DNR
Karen Wilson, EPPC
Amanda Wilson, EPPC
EQC Commissioners
Jo Hargis, EQC





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**RESOLUTION
OF THE
KENTUCKY ENVIRONMENTAL QUALITY COMMISSION
MOUNTAINTOP REMOVAL MINING**

Pursuant to KRS 224.01-100 through 224.04-115, the Environmental Quality Commission shall have the power, duty and authority to:

- Advise the secretary on any matter within her responsibility which it deems necessary.
- Advise the Governor on any matter covered by the provisions of this chapter.

Therefore, on 8 June 2006:

the Environmental Quality Commission voted unanimously to recommend the following Resolution of the issue of mountaintop removal mining.

Whereas, Congress, in enacting the federal Surface Mining Control and Reclamation Act of 1977, was concerned with the damage done from the dumping of earth and rock from mining benches into headwater streams in Appalachia; and

Whereas, headwater streams provide valuable ecological goods and services, prevent excessive downstream transport of nutrients; provide unique habitats for aquatic biota; provide thermal refuges for fishes; and are a significant biologically active component of the river systems, providing for physical and biological processing of inputs of organic matter from the watershed that are essential food resources for ecosystems downstream; and

Whereas, in order to minimize the damage to land and water resources, and to restore the mined land to productive capability, Congress required that the earth and rock (called "spoil") be replaced on the mine bench and that the original contour of the mountain be restored; creating a narrow exception to this requirement to restore the approximate original contour to allow removal of all earth and rock material from over a coal seam (called "mountaintop removal") without having to restore the original contour if specific plans and commitments were demonstrated for development of the land for industrial, commercial, residential, agricultural or public use; and

Whereas, most of the mining operations that are viewed as mountaintop removal are not technically categorized as such – they are mine plans that use a combination of point removal,



area mining and deep contour cuts, and produce similar ecological consequences; however, without the benefit of a mountaintop removal permit, and thus without the requirement of beneficial post-mining uses of value to the community; and

Whereas, the Commission believes that it is in the best interest of the environment, the local citizens and the mining industry itself, for the industry to take proactive steps to be a “good neighbor;” and

Whereas, the issues of the form of surface coal mining known as mountaintop removal mining and the associated issues of spoil management and granting of variances from the requirement to restore mined lands to the approximate pre-mining original contour (AOC) is contentious; and

Whereas, the federal Office of Surface Mining has conducted studies which have identified spoil disposal as an issue of concern; and

Whereas, the Commission believes that it is in the best interests of the Commonwealth of Kentucky to assess:

- The short and long term economic benefit, both local and statewide, of mountaintop removal mining;
- The practicability of existing economic and policy drivers for achieving a sustainable environment through mountaintop removal mining; and
- The degree and prevalence of social, human and environmental health impacts as a result of policy non-compliance, non-enforcement or lack of appropriate policy; and

Whereas, the Commission believes that it is in the best interest of the environment, the local citizens and the mining industry itself, for the industry to:

- Expand its scientific knowledge of the impacts of mountaintop removal mining;
- Continue to minimize the size and adverse impacts of hollow fills;
- Improve long term mine planning strategies to improve the sequential mining of areas that will minimize mining impacts and reduce the number and size of fill areas;
- Maintain and improve the water quality where possible in areas where mining takes place;
- Improve lines of communication to local communities and citizens living at or near mine sites;
- Utilize reclamation techniques that include the Forestry Reclamation Approach, which minimizes erosion and loss of soil and increases the speed of reforestation; and

- Encourage landowners to support a post mining land use of woodlands and forests.

Therefore, the Commission requests that:

1. The Department for Natural Resources review existing procedures to ensure:

- Both the aspect and elevation components of AOC are being enforced to ensure safe retention of soil and rock on the mined area;
- Valley fills are being constructed in conformance to minimize off site impacts and to minimize the number of fills;
- The implementation, administration and currency of the stream buffer zone rule for meeting the water quality standards requirements are being applied through the entire stream reach;
- The implementation, administration and currency of post mining land use regulations for assuring changes in land use are appropriate and feasible;
- Incremental mountain mining which produces the same or more severe environmental impacts as those associated with permitted mountaintop removal mining be required to provide the same beneficial post-mining uses of value to the community;
- Citizens downstream of coal waste impoundments be protected against possible failure of such structures by requiring owners of such facilities to develop early warning or emergency notification plans; and
- The closure, dewatering and reclamation of the scores of abandoned coal waste impoundments still under permit be accelerated to the greatest degree possible.

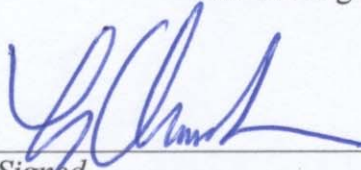
2. The Department for Environmental Protection review existing procedures to ensure that:

- The existing "In lieu fee" approach for mitigation of unavoidable impacts to waters of the Commonwealth is adequate to ensure that comparable mitigation will occur in the same hydrologic unit providing equivalent functions and values and that the fee posted is realistic to the cost of compensatory replacement of functions and values lost.

The Commission further recommends that mine permittees:

- Review current blasting plans in order to assure protection of the property and lives of those residing near mining operations;
- Conduct alternatives analysis and design mine sequencing with the goal of reducing the size and number of valley fills;

- Work with Kentucky's Division of Abandoned Mine Lands to determine the feasibility of using excess material to reclaim abandoned mines through disposal on pre-existing benches near existing mining operations;
- Dispose of excess spoil in a manner that through location, design and configuration minimizes and compensates fully for adverse impacts on the environment; and
- Minimize disruption to communities and relieve stress on minor roads by constructing and using dedicated haul roads and conveyor systems where feasible.

 6/8/06
Signed date

cc: Bruce Scott, Director, Division of Waste Management
Karen Wilson, Policy Advisory, Office of Legislative and Intergovernmental Affairs
Lloyd Cress, Commissioner, Department for Environmental Protection